DECLARATION OF PETER GARZA

I, Peter Garza, hereby make the following declaration under penalty of perjury under the laws of the United States. I declare that the facts stated herein are true, correct and within my own personal knowledge. If called as a witness and sworn I could and will competently testify to these facts.

1. I am a Senior Vice President with First Advantage Litigation Consulting ("FADV"), a firm specializing in computer forensics and electronic discovery. Prior to joining FADV, I was the founder and President of EvidentData, Inc. ("EvidentData"), a computer forensics firm located in Rancho Cucamonga, California. I have worked as a computer forensics expert in hundreds of civil litigation cases. I have performed analysis of computer evidence in enterprise environments which have included investigation of computer intrusions, human relations issues, theft of trade secrets and trademark infringement, along with criminal investigations for the FBI, the Securities and Exchange Commission and other state and local law enforcement agencies. In hundreds of cases I have worked, both as a federal agent during the 1980's and 1990's and since then as expert consultant, I have worked in enterprise computing environments. I work with computer network and systems professionals at every level on a daily basis. My graduate degree is in MSMIS (Master of Science Management Information Systems) from Claremont Graduate University. I have recruited and trained analysts with Information Systems degrees. I supervise staff working in varied information technology ("IT") environments in many types of enterprises on a daily basis. During my work with the Department of the Navy working computer hacking and counter intelligence operations and more recently as an IT practitioner advising clients on security of enterprise networks, I work with network professionals and all levels of IT staff. I have worked on hundreds of civil litigation cases involving interacting with IT staff from executives responsible for global operations in large corporations, to working with computer technicians on

single-computer evidence issues. Cases on which I work that do not involve computer networks are the exception rather than the rule. Very often I must assess the skill level of client's or opposing party's IT staff to properly formulate computer forensics preservation and analysis tasks. A true and correct copy of my resume is attached hereto as Exhibit 23.

2. In forming my opinions, I reviewed the following materials:

A. Deposition transcript of Amedeo Discepolo, dated February 20, 2008, with exhibits 1-12;

B. Deposition transcript of Thomas Saranello, dated February 7, 2008, with exhibits 1-8;

C. Deposition transcript of Carmelo Millan, dated January 16, 2008, with exhibits 1-16;

D. Complaint and Jury Demand, case number 07 CIV 3769, May 11, 2007;

E. Citigroup Technology Infrastructure NISS Policies and Procedures Manual, dated April 10, 2003, Version 1.7;

F. Citigroup Technology Infrastructure NISS Policies and Procedures Manual, dated August 29, 2003, Version 1.8;

G. Amended Complaint and Jury Demand, case number 07 CIV 3769, September 21, 2007;

H. Defendants' Memorandum of Law dated February 25, 2008;

I. Defendants' Statements of Undisputed Facts, dated February 22, 2008;

J. Printout of CertCities.com article titled "Cisco To Launch New CCNA Exam, Add Two-Exam Option for Less-Experienced Candidates," dated June 23, 2003, attached as Exhibit 24;

K. Web page titled "Certifications Overview - IT Certification and Career Paths - Cisco Systems," printed March 12, 2008, attached as Exhibit 25;

L. Web page titled "CCNA - Career Certifications & Paths - Cisco Systems," printed March 12, 2008, attached as Exhibit 26;

M. Web page titled "ICND - IT Certification and Career Paths - Cisco Systems," printed March 12, 2008, attached as Exhibit 27; and

N. Fluke Networks brochure for MicroScanner Cable Verifier, downloaded March 12, 2003, attached as Exhibit 28.

O. Systems Analysis and Design, Fourth Edition, Prentice Hall, by Kenneth Kendall and Julie Kendall, 2007. p. 5-6

P. Principles of Information Systems Management, Fourth Edition, Wm. C. Brown Communications, Inc., by Niv Ahituv, Seev Neuman and H. Norton Riley, 1994. p. 80-83

Q. Systems Analysis and Design An Object-Oriented Approach with UML, John Wiley & Sons, Inc., Alan Dennis, Barbara Haley Wixom and David Tegarden, 2002. p. 94-95

R. CCNA Cisco Certified Network Associate, Third Edition, Wiley Publishing, by Todd Lammle, 2008.

S. CCNA Exam Prep, Second Edition, Pearsen Education, Inc, by Jeremy Cioara, David Minutella and Heather Stevenson, 2008.

3. Mr. Carmelo Millan worked for Citigroup Technology, Inc. ("CTI") and Citigroup, Inc. ("Citi") (collectively referred to as "Citigroup") from about June 2000 until March, 2007. Mr. Millan's resume lists his position as "Network Analyst" from June 2000 until January 2003. From this position, Mr. Millan took the position of "Lab Coordinator", which he held until March of 2007. Review of the deposition transcripts listed above of Mr. Millan, Mr. Discepolo and Mr. Saranello reveal that the technical aspects of Mr. Millan's work involved a level of technical skill which, in my experience, is associated with support staff who operate computer systems and not that of a computer systems professional who designs or develops those systems. In designing or redesigning a system, a systems analyst

observes the interactions of the system within the organization and works with developers on improvements.

> *The systems analyst systematically assesses how businesses function by examining the inputting and processing of data and the outputting of information with the intent of improving organizational processes. Many improvements involve better support of business functions through the use of computerized information systems. This definition emphasizes a systematic, methodical approach to analyzing – and potentially improving – what is occurring with the specific context of the business... The three primary roles of the systems analyst are: consultant, supporting expert and agent of change. (See Paragraph 2O above, Kendall and Kendall)*

4. Based on my education and experience, a systems analyst applies expert-level skills to develop a new system or assist with improvement of an existing system. Systems analysis is not the day-to-day operation of the system. However, it may involve observing the operation of the system and perhaps measuring its performance to advise decision makers on improvements. In Paragraph 2P above, Ahituv, et al., discuss a "Systems Approach to Information Systems Development and Problem Solving." The authors outline a process that begins with defining a problem in an information system and explain the major steps in arriving at an implementation of the improved system. In Paragraph 2Q, Dennis, et al., also discuss the systems analysis process and posit three steps: evaluating the existing system, identifying the improvements and developing the new system. I have been involved in this development process on a number of projects for systems used in law enforcement, counter intelligence, and computer forensics. In addition, I have worked with executive-level systems professionals in many of the hundreds of cases in which I have been involved. I have applied systems analysis evaluation techniques in defining electronic discovery and computer forensics projects. I have also interacted with users and administrators of computer systems, like Mr. Millan,

in development projects as well as computer evidence consulting assignments. Technicians, such as Mr. Millan who support the operation of systems may provide input in the systems analysis process, but their role in operating the computer devices within a system is not the same as the role of a systems analyst. Mr. Millan's work with Citigroup entailed his applying technical skills to a set of tasks defined by industry standards and specifications developed by higher-level computer network engineers.

5. Based on my education and experience I observed that Mr. Millan's work at Citigroup involved tasks that the industry considers low-level networking skills. Mr. Millan's resume list tasks he performed in his position of "Network Analyst". Mr. Millan's resume states that he would "Handle Help Desk calls regarding network & network connectivity issues as well as application issues." He also lists that he would "Handle the network connectivity and software checkout aspect of moves, adds and changes to the company network." He goes on to list that he responded to trouble reports ("trouble ticketing") and performed reporting for the thirty eight floors of Citigroup's company network. These entries in Mr. Millan's resume refer to responsibilities in performing basic configuration and troubleshooting expected of any network support technician. Mr. Millan describes the network environment as a "mixed DHCP/static, 10/100 switched Ethernet, gigabit backbone environment". This refers to the most common networking environment used with computers like those operating with Microsoft Windows. DHCP refers to the automatic assignment of network address when the computer is turned on. 10/100 Ethernet is the standard cable that connects the computers, and gigabit is a standard transfer rate built into devices by the manufacturer. These are all common standards implemented in most office environments. Mr. Millan's work involved using devices that adhered to these standards with virtually no additional configuration required.

6. Mr. Millan also states he performed tasks supporting Cisco routers and

switches along with connecting devices to network lines used to connect to remote networks (OC3, ISDN, T1/T3, etc.). These network lines are normally provided by a telecommunications company and network technicians connect devices like a router to the end point on the company location. Mr. Millan's work with these types of network lines would have involved him connecting the network line to the Citgroup network via a device like a router.

7. The tasks Mr. Millan describes for his "Network Anaylst" position in his resume are governed by established protocols much like a telephone technician installing a phone system. The telephone requires a proper signal (dial tone in analog phones) to make a call and, therefore, a phone must have a number assigned which is associated with a subscriber account and the physical location. Network devices, like the devices Mr. Millan supported, work on a basic set of protocols that are designed by their manufactures and administered by network technicians. A network engineer might decide what type of devices and their location on the network and a network technician will implement those decisions. A telephone repairman installing a phone or resolving issues does not design a new phone system from the ground up. Although a network technician like Mr. Millan works with a more varied set of physical devices, the network technician's application of standard connections, configuration and location parameters is analogous to a telephone technician's task of installing or repairing telephone systems.

8. Mr. Millan described the duties he performed in his position as "Lab Coordinator/Network Engineer" for Citigroup ending in March of 2007. My review of the tasks Mr. Millan listed in this portion of his resume indicates he continued to install, configure and troubleshoot network devices. The "build out" of the "Lab/Development Data Center" listed in Mr. Millan's resume and discussed in his deposition involved a higher volume of computer servers and devices moved, acquired or installed in the Lab. These tasks involved the same type of technical support functions he performed as a network analyst.

9. In my experience in information systems working in many business environments as an expert consultant in computer forensics, I have observed that what are routine technical tasks to a computer technician may be perceived as overly complex and sophisticated to a layperson unfamiliar with the industry. Mr. Millan testified he completed the Cisco ICND ("Interconnecting Cisco Networking Devices") examination and received the Cisco CCNA ("Certified Cisco Network Associate") certification. The ICND is a test administered as part of the CCNA certification. The ICND is not itself a certification. Cisco is a manufacturer of enterprise networking devices which also provides three levels of certification: Associate, Professional, and Expert. Both Cisco and industry experts describe the CCNA as an entry-level certification for technicians new to networking. Lammle (Paragraph 2R above) states that Cisco certification can help you get your first networking job. This CCNA exam preparation book begins with basic networking concepts and goes on to describe many of the types of tasks Mr. Millan performed at Citigroup. I reviewed Lammle's description of the CCNA material and in my experience it is consistent with the entry level tasks performed by Mr. Millan. I reviewed another CCNA preparation by Cioara, et al. (Paragraph 2S above) which states "The Cisco Certified Network Associate (CCNA) accreditation has become the leading introductory-level network certification available today."

10. Review of the Cisco learning web site showed that the "CCNA certification validates an individual's *"ability to install, configure, operate and troubleshoot medium-sized routed and switched networks, including implementation and verification of connections to remote cities in a [Wide Area Network]."*" This excerpt from the Cisco Systems "CCNA - Career and Certifications" page (Paragraph 2L above) goes on to state *"...curriculum includes basic mitigation of security threats, introduction to wireless networking concepts and terminology, and performance-based skills. This new curriculum also includes (but is not limited to) the use of these protocols: IP, Enhanced Interior Gateway*

Routing Protocol (EIGRP), Serial Line Interface Protocol Frame Relay, Routing Information Protocol Version 2 (RIPv2), VLANs, Ethernet, access control lists (ACLs)." Cisco's depiction of the CCNA certification confirms it is not an advanced networking certification. The Cisco Learning website provides information about their three levels of certification. The Associate level attained by Mr. Millan in completing the CCNA is considered only slightly above the Certified Cisco Entry Network Technician ("CCENT") shown in Graphic 1, which shows Cisco's graphic representation of these lower level certifications below the Professional and Expert advanced-level certifications (Paragraph 2 L above). As indicated in Graphic 1, Mr. Millan's CCNA certification is only an entry-level networking certification.

11. The Cisco web site has another page titled "Certifications Overview - IT Certification and Career Paths" which further describes the CCNA certification as an "apprentice or foundation level" certification:

Graphic 1

"Think of the Associate level as the apprentice or foundation level of networking certification."

12. Further, the Cisco Learning website lists a June 2003 article on the information technology ("IT") certification web site CertCities.com (Paragraph 2J above) titled "Cisco to Launch New CCNA Exam, Add Two Exam Option for Less Experienced Candidates" pertaining to a new version of the ICND exam for CCNA certification. This article emphasizes Cisco's intent to attract entry-level candidates to the CCNA certification, and further illustrates that the CCNA is not "advanced networking certification."

13. All the tasks that Mr. Millan performed and mentioned above for the CCNA, are well defined tasks that adhere to industry or Cisco standards. The CCNA trade certification ensures that technicians are aware of set protocols for

operating Cisco networks.

14. The items listed in paragraph 2 above and which I reviewed, reveal that Mr. Millan worked on troubleshooting and resolving network problems. My review indicates that these network problems primarily involved issues with connections to the network. Among the tools Mr. Millan used in troubleshooting network connections were telephone "butt sets." This simple device, depicted in Graphic 2, obtained from the Cisco web site, is commonly used to test telephone lines. Based on my training and experience as a federal agent working on computer hacking cases, I am aware one can clip the butt set leads to a pair of telephone wires or contacts to test the telephone line. This device is commonly used by telephone repairmen to test connectivity of phone lines and is a simple task requiring minimal training or experience

Graphic 2

15. A Microscanner, which was another device mentioned in the testimony I reviewed, was also used for testing network connectivity. This device, made by Fluke Networks, is used to verify that there are no faults in network cables. The Microscanner device uses a simple interface that allows technicians to do a battery of tests. (Paragraph 2N above). Devices like the butt set and the Microscanner are used to determine if network and telephone cabling are operating within set parameters. Mr. Millan would have used these testing devices along with the other network testing devices he mentioned (fiber testers, Mod-Taps and Fluke meters) in accordance with established industry standards.

16. Based upon a review of the deposition transcripts Citigroup engineers designed the Citigroup network and Mr. Millan provided technical support. This support was often in the form of testing a physical run of cable. As a carpenter might provide feedback to an architect in the implementation of a design, so did Mr. Millan apply his on-site knowledge in the physical execution of an engineer's

network design. Mr. Millan checked the physical layout of a "stack" of computers (multiple computers vertically placed in a rack designed for that purpose) in a server room. He also checked network devices on user's desks. He was tasked with ensuring that the physical length of cable did not exceed established standards. The Institute of Electrical and Electronic Engineers ("IEEE") has determined the maximum length for the type of network cable used by Citigroup (Ethernet 10BaseT) is 100 meters (Paragraph 2S above, p. 89). Mr. Millan's task of checking server stacks or placement of network devices was to ensure cable lengths did not exceed this approximate 330 foot maximum length standard.

17. Mr. Millan testified that he was responsible for ensuring network connectivity for Citigroup users. This entailed establishing and/or checking that a Citigroup employee or group of employees had a network connection from their computer workstations. This involved creating a connection from the device in question, for example a personal computer ("PC") on a user's desk, to the Citigroup local area network ("LAN"). In the most basic form, a technician creates a LAN by connecting a cable to a personal computer or other device and running the cable to a hub (a device with multiple sockets for network cable connections) located in the same office. If the office required connection to the Internet or a corporate network, the technician would connect a cable from the hub to a router which is connected to the Internet or the corporate network. A corporate network is an example of a wide area network ("WAN") which connects multiple locations as opposed to a LAN which is limited to a single location. The router directs network communications to either computers on the office LAN, the Internet or the corporate WAN, as appropriate. The ports on the hub simply provide the connection for the cable. The ports on the hub look much like traditional phone jacks only a bit larger. Network cables have four pairs of wires (eight wires) compared to the two pairs of wires in traditional telephone cables. A network segment for an office or a floor of a building is created by connecting cables to the

hub and connecting the other end of the cables to the devices. This creates a physical local area network.

18. In his testimony, Mr. Millan explained he supported Cisco switches. A switch performs a function similar to a hub (described above) by providing a connection to multiple devices on a network, but has enhanced features. Like a hub, a switch has ports for connecting network cables which connect devices on the network. The devices connected to a hub are on one LAN. In contrast, a switch can separate connected devices into multiple LANs even though they are physically connected to the same switch. By using settings in the software on the switch, groups of devices are separated into virtual local area networks ("VLAN").

Graphic 3

19. The device depicted in Graphic 3 is a Cisco 5500 switch. This type of switch is among the types of devices Mr. Millan supported. Mr. Millan's duties involved plugging cables into the switch and verifying that the connection was operating properly, by using one of the testing devices listed above. Mr. Millan's duties also included requesting changes to the settings on these switches. Changes involved assigning a network address to the ports or simply turning them on and off. Early in his position of Network Analyst, Mr. Millan and other technicians at his level were allowed to connect to the Citigroup's Cisco switches and use standard text commands to make changes to ports on the switch. The Citigroup switches Mr. Millan supported operate under the Cisco IOS (Internetwork Operating System) which implements a standard set of text-based commands to change settings on a Cisco switch.

20. Mr. Millan and Mr. Saranello testified that the ability to make these changes in the Cisco switches was assigned to a higher level technician early in Mr.

Millan's position as Network Analyst. Thereafter, Mr. Millan testified he entered these requests for changes in a database systems used to track these settings. I reviewed the April and August, 2003 copies of the Citigroup Technology Infrastructure NISS Policies and Procedures Manuals (listed above in Paragraph 2E and F). In a task described as a "Layer 2 Switch Port Change Request" a technician is guided through the process of requesting a change to switch port settings. Mr. Millan testified that he entered the request for changes to port switches with this Citigroup system. Mr. Millan's data entry tasks for requesting changes are another example of low-level technical support tasks.

21. Mr. Millan's duties as "Network Analyst" and "Lab Coordinator" with Citigroup did not involve systems analysis or design of the networks which involved Cisco devices. His duties were technical support functions to ensure that the physical equipment that attached the devices on the Citigroup network, operated within set parameters and according to set procedures. In Mr. Millan's later position as Lab Coordinator, his technical role was supporting the physical connectivity of the network, which involved a greater number of devices, but the technical level of his duties remained the same.

22. In reviewing the deposition transcripts, among the tasks Mr. Millan performed was creating spreadsheet-lists of inventory and the elevation drawings and the connectivity database. This did not involve computer programming as the term is understood in the computer industry. I have worked on computer software development projects and worked with programmers in the software that I use and software I have helped develop. Computer programming involves writing code in a programming language. The programming code is a set of instructions which determine how the program operates. Programs like Microsoft Excel, which Mr. Millan used for creating lists of inventory, are simple to use programs requiring only basic skills for the most common tasks. In my experience working in the industry as a user, as a trainer in computer forensics, and managing software

development projects, I have used Microsoft programs for many years and have used systems analysis tools to design database systems. I know that Microsoft Excel is not used for computer programming. I have performed systems analysis and design work executed by programmers in standard programming languages. Although programs can be written by programmers which interact with Microsoft Excel, my review of the deposition transcripts indicates the database tasks performed by Mr. Millan involved the creation of basic databases based on established templates. He did not do computer programming or use systems analysis skills to design complex databases.

23. I reviewed the performance evaluations of Mr. Millan, Mr. Millan's resume, the deposition testimony of witnesses along with Defendants' Statements of Undisputed Facts and observe that Mr. Millan's technical duties with Citigroup, both in his earlier position as a Network Analyst and later as a Lab Coordinator involved technical support functions. The CCNA certification he had obtained is considered by the industry leader, Cisco, as an entry-level certification involving the types of technical tasks Mr. Millan performed at Citigroup. The work Mr. Millan performed as a computer employee with Citigroup did not involve systems analysis techniques or procedures as the term is understood in the information systems industry. Although Mr. Millan did consult with users, it was not to determine system specifications. Mr. Millan's interaction with users was in the application of well-established procedures and industry standards applied to the placement of network devices and resolving connectivity issues.

24. Mr. Millan's duties with Citigroup did not involve computer systems design. In the material I reviewed it appears that Mr. Millan may have reviewed network designs prepared by network engineers and provided input regarding his knowledge of the physical placement of devices, however, he did not create the network designs or specifications. My review of the documents listed above revealed that Mr. Millan's duties did not involve performing systems analysis and

design. Mr. Millan's duties included using simple databases, not designing them. Mr. Millan's duties early in his position with Citigroup involved connecting to Cisco switches and issuing Cisco Internetwork Operating System (IOS) commands not designing changes to the operating system. Based on my education, experience and training as a systems analyst, IT practitioner and computer forensics consultant, it is apparent to me that the combination of duties performed by Mr. Millan are common technical tasks routinely performed by low-level technicians who are not involved in systems development.

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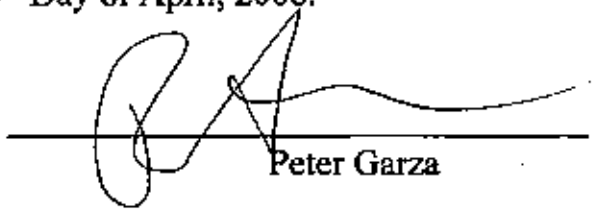
I declare under penalty of perjury that the foregoing is true and correct. Executed at Rancho Cucamonga, California on this 15th Day of April, 2008.



Peter Garza